IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.228 OF 2005
IN
FIRST APPEAL NO.1 OF 2005

The Municipal Corporation of Greater Mumbai. ... Applicants

Vs.

Metro Entertainment (Bombay) Pvt. Ltd. & Anr. ... Respondents

Mr. A.Y. Sakhare, senior counsel with Mr. S.H. Ujjanwalla and Smt. V.K. Khatu for the applicants.

Mr. Aspi Chinoy, senior counsel with Mr. V.B. Naik and I.M. Khairdi for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 28TH JANUARY, 2005.

P.C.:-

1. Being aggrieved by the alleged arbitrary increase of rateable value, the appellants herein had filed an appeal under section 217 of the Mumbai Municipal Corporation Act, 1888 (for short, "the said Act") in the Small Causes Court at Bombay. Admittedly, the respondents-assessees have paid an amount of Rs.2,06,46,940/- because under section 217 (3) of the said Act, the appeal cannot be entertained unless the disputed tax claimed is paid by the assessee. By the impugned order, the said appeal is allowed. The relevant extract of the operative part of the impugned order may be quoted :

"Appeal is allowed.

The order of Investigating officer dt. 29-4-2002 confirming the ratable value of Rs.19,54,740/- N.P.A. with effect from 1-4-1999 is hereby set aside.

Ratable value in respect of the appeal property is substituted at Rs.5,17,310/-.

Respondents are hereby directed to issue fresh bill on the basis of ratable value of Rs.5,17,310/- with effect from 1-4-1999.

In view of the deposit of bill amount by the appellant with B.M.C. the appellants are entitled to refund the amount as per law.

Respondents are directed to refund the excess amount deposited by the appellant with the respondents' office."

2. The appeal is admitted today. The appellants are praying for the stay of the impugned order.

3. My attention is drawn to the second proviso to sub-section (5) of section 217 of the said Act. As per the said proviso in case the appeal is decided in favour of the appellant and amount of property tax deposited with the Corporation is more than the property tax payable by him, the Commissioner shall adjust the excess amount of the property tax with interest at 6.25% per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter.

4. Admittedly, the amount deposited by the assessee is in excess of the amount which they are liable to pay as per the impugned order. In my opinion, this decree is in the nature of a money decree because but for second proviso to sub-section (5) of section 217 of the said Act, the appellants whould have had to pay the excess amount to the assessee. Besides, this proviso makes it obligatory on the Corporation in case the appeal is decided in favour of the assessee to adjust the excess amount of the property tax with interest at 6.25% per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter.

5. In view of this, in my opinion, the stay of the impugned order cannot be granted. Needless to say that the excess amount which is lying with the Corporation

will have to be adjusted according to the second proviso to sub-section (5) of section 217 of the said Act. In case the appellants succeed, the adjustment can always be called of and the accounts can be made up and the money which may be due from the respondent-assessee can always be recovered by the Corporation by taking recourse of the provisions of the said Act.

6. Civil Application No.228 of 2005 is disposed of in the aforestated terms.

7. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(SMT. RANJANA DESAI, J.)